

**PART 701—REPORTING OF OFFSETS
AGREEMENTS IN SALES OF
WEAPON SYSTEMS OR DEFENSE-
RELATED ITEMS TO FOREIGN
COUNTRIES OR FOREIGN FIRMS**

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SOURCE: 59 FR 61796, Dec. 2, 1994, unless otherwise noted.

§ 701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Industry and Security as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports are submitted annually to Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

[59 FR 61796, Dec. 2, 1994, as amended at 74 FR 68140, Dec. 23, 2009]

§ 701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of

defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations.

(c) *Prime Contractor*—A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) *United States*—Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) *Offset Agreement*—Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are “best effort” agreements or are subject to penalty clauses.

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements are categorized as co-production, technology transfer, subcontracting, credit assistance, training, licensed production, investment, purchases and other. Paragraphs (f)(1) through (f)(8) of this section provide examples of the categories of offset transactions.

(1) *Example 1.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The defense article will be sold to country C pursuant to a Foreign Military Sale and the production role of Company B is described in the Letter of Offer and Acceptance associated with that sale and a government-to-government co-production memorandum of understanding. This transaction would be categorized as co-production and would, like all co-production transactions, be direct.

(2) *Example 2.* Company A, a U.S. firm, transfers technology to Company B, a foreign firm located in country C, which allows Company B to conduct research and development directly related to a defense article that is subject to an offset agreement between Company A and country C. This transaction would be categorized as technology transfer and would be direct because the research and development is